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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-830

DAVID MEYERS and PAUL L. KEGEL,

Appellants,

—v.—

KEN W. ROBERTS, Nobles County Auditor,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

	Page
Table of Authorities	ii
Opinions Below	2
Jurisdiction	2
Statute Involved	3
Questions Presented	4
Statement of the Case	4
The Questions Are Substantial	7
1. This is the first case presented to this Court in which the voters have actually elected a person who does not meet state age requirements..	7
2. This Court should resolve conflicts in state and federal decisions as to the equal protection criterion to be applied in cases involving a person's right to run for and hold public elective office.....	11
A. The "strict scrutiny" test...	13
B. The "strengthened rational relation" test.....	15
3. Neither Massachusetts Board of Retirement v. Murgia nor Whitehead v. Westbrook is controlling here.....	18

4. It is unconstitutional under the 26th Amendment to deny to voters the right to vote for persons on account of age..... 21

Conclusion..... 22

Table of Authorities

Cases

Adamson v. California, 332 U.S. 46 (1947)..... 3

Blassman v. Marckworth, 359 F.Supp. 1 (N.D. Ill. 1973)..... 15

Bullock v. Carter, 405 U.S. 134 (1972).. 17

Bykofsky v. Borough of Middletown, 401 F.Supp. 1242 (M.D. Pa. 1975), aff'd, 535 F.2d 1245 (3rd Cir.), cert. denied, 45 U.S. Law Week 3362 (Nov. 15, 1976)..... 12

Colorado Project - Common Cause v. Anderson, 495 P.2d 220 (Col. 1972).... 21

Harper v. Board of Elections, 383 U.S. 663 (1966)..... 3

Johnson v. Hamilton, 15 Cal. 3d 461 (1975)..... 13-14

Kramer v. Union Free School District, 395 U.S. 621 (1969) 3

Lubin v. Panish, 415 U.S. 709 (1974) 8, 9, 17, 18

Mancuso v. Taft, 476 F.2d 187 (1st Cir. 1973) 15

Manson v. Edwards, 345 F.Supp. 719 (E.D. Mich. 1972), rev'd, 482 F.2d 1076 (6th Cir. 1973) 14

Massachusetts Board of Retirement v. Murgia, ___ U.S. ___, 49 L.Ed.2d 520, 96 S.Ct. 2562 (June 25, 1976) 18, 19

McGowan v. Maryland, 366 U.S. 420 (1961) 11

Oregon v. Mitchell, 400 U.S. 112 (1970) 22

Powell v. McCormack, 395 U.S. 486 (1969) 9

Railway Express Agency v. Virginia, 282 U.S. 440 (1931) 3

Reynolds v. Sims, 377 U.S. 533 (19 (1964) 7, 10

Torcaso v. Watkins, 367 U.S. 488 (1961).. 3

Turner v. Fouche, 396 U.S. 346 (1970).... 16

Whitehead v. Westbrook, 423 U.S. 962 (1975) 18, 20

Wurtzel v. Falcey, 69 N.J. 401, 354 A.2d 616 (1976) 6, 22

Constitutional Citations

Minnesota Constitution,
Article VII, Section 6..... 2, 3, 4, 5, 7

United States Constitution,
Article I, Section 2 10
Article I, Section 3 10
Article II, Section 1 10
Amendment I 4, 8
Amendment XIV 2, 4, 5, 8, 9, 18
Amendment XXVI 2, 4, 12, 20, 21, 22

Statutes

28 U.S.C. §1257(2) 2, 3

Minnesota Statute 645.452 12

Other Authorities

2 Elliotts Debates 257 9-10

Gunther, "The Supreme Court, 1971 Term, Forward: In Search of Evolving Doctrine on a Changing Court: A Model For A Newer Equal Protection," 86 Harv. L. Rev. 1 (1972) 15-16

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No. _____

DAVID MEYERS and PAUL L. KEGEL,

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v.

KEN W. ROBERTS, Nobles County Auditor,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Minnesota entered on September 24, 1976, affirming the order of the district court dismissing plaintiffs' complaint, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 246 N.W. 2d 186. It is set out in the Appendix, infra, pp. 1a-13a. The memorandum opinion of the District Court is not reported. It is set out in the Appendix, infra, pp. 14a-18a.

JURISDICTION

This suit was brought in the district court of Nobles County, Minnesota, to compel defendant county auditor to certify plaintiff David Meyers as elected to the office of court commissioner for Nobles County. Plaintiffs alleged that Minnesota Constitution, Article VII, Sec. 6, which attempts to limit the right to hold elective office to persons 21 years of age and older, is unconstitutional under the 14th and 26th Amendments to the United States Constitution. The district court dismissed plaintiffs' complaint by order dated November 10, 1975, and the Supreme Court of Minnesota affirmed that order on September 24, 1976. Notice of appeal to the Supreme Court of the United States was filed in the Supreme Court of Minnesota on October 22, 1976.

The jurisdiction of the Supreme Court to review this decision and order by direct appeal is conferred by 28 U.S.C. §1257(2), in

that the validity of a state constitutional provision is challenged on the ground of its being repugnant to the Constitution of the United States, and the decision of the Minnesota Supreme Court is in favor of its validity.

The term "statute of any state" in 28 U.S.C. §1257(2) includes state constitutional provisions. Railway Express Agency v. Virginia, 282 U.S. 440 (1931); Adamson v. California, 332 U.S. 46 (1947); Torcaso v. Watkins, 367 U.S. 488 (1961).

Cases believed to sustain the jurisdiction of this court include Harper v. Board of Elections, 383 U.S. 663 (1966), and Kramer v. Union Free School District, 395 U.S. 621 (1969).

STATUTE INVOLVED

Minnesota Constitution Article VII, Section 6, provides as follows:

> "Every person who by the provisions of this article is entitled to vote at any election and is 21 years of age is eligible for any office elective by the people in the district wherein he has resided 30 days previous to the election, except as otherwise provided in this constitution, or the consti-

tution and law of the United States." (Vol. 2, Minnesota Statutes Annotated, p. 227.)

QUESTIONS PRESENTED

1. Does the right to vote, protected by the First and Fourteenth Amendments to the United States Constitution, include the right to vote for and elect to public office persons of any age, or at least adult persons of any age, so as to render unconstitutional the age limitation of Minnesota Constitution Article VII, Section 6?

2. Should this Court adopt a strengthened rational relation test in cases involving a person's right to run for and hold public elective office?

3. Is it unconstitutional under the 26th Amendment to the United States Constitution to deny to voters the right to vote for persons on account of age?

STATEMENT OF THE CASE

The following facts were stipulated by the parties:

On November 5, 1974, plaintiff David J. Meyers was elected by write-in vote to the office of court commissioner for Nobles County, Minnesota. The votes case in said election were cast as follows:

David J. Meyers	275 votes
Jim Wychor	40 votes
Tod Cornell	32 votes
Others	66 votes
	413 votes

Defendant has refused to certify plaintiff David Meyers as elected to said office on the ground that plaintiff was 19 years of age at the time of the election, and would not be 21 years of age at the time of taking office (January 2, 1975). Plaintiff David J. Meyers was born March 11, 1955. Except for his age, plaintiff David J. Meyers meets all the qualifications to hold the office of court commissioner for Nobles County. Plaintiff Paul L. Kegel is a resident of Nobles County, Minnesota, and was one of the persons who voted for David J. Meyers for court commissioner in the election of November 5, 1974. To date no one has been certified to the office of court commissioner for Nobles County, and the office is now vacant.

This lawsuit was commenced September 22, 1975. Copies of the Summons and Complaint were served upon the Minnesota Attorney General September 30, 1975. Cross motions for summary judgment were heard in Nobles County District Court November 3, 1975, and Judge Harvey A. Holtan granted Defendant's motion November 10, 1975. Plaintiffs appealed to the Minnesota Supreme Court November 18, 1975.

Plaintiffs' complaint raised the federal constitutional issues here presented, alleging that Minnesota Constitution Article VII, Section 6, is unconstitutional under the 14th and 26th Amendments to the United States Constitution. Both the district court and the Supreme Court of Minnesota rejected plain-

tiffs' claims and ruled in favor of the validity of the Minnesota constitutional provision.

The Minnesota courts rejected appellants' argument that the age qualification should be treated as either a suspect criterion or interference with a fundamental right so as to require appellee to demonstrate a compelling state interest for the age requirement. The Supreme Court ruled that where a legislative classification "affects only the exercise of the franchise for the candidate of one's choice, then it need only be found reasonably necessary to the accomplishment of important and legitimate state objectives in order to pass constitutional muster." 246 N.W. 2d at 187 (App., infra, p. 4a).

Furthermore, the Minnesota Supreme Court refused to remand the case for an evidentiary hearing as to the rational basis for the age requirement here, as requested by appellants. The court noted that arguably the appropriate disposition of this case would be "a remand to the district court for taking evidence on the issue whether a 19-year-old aspirant to the office is, as a matter of fact, less mature, experienced, and competent than a 21-year-old candidate," citing Wurtzel v. Falcey, 69 N.J. 401, 354 A.2d 617 (1976)(Mr. Justice Pashman, dissenting), but neglected to state its reason for not doing so. 246 N.W. 2d at 189 (App., infra, p. 10a).

THE QUESTIONS ARE SUBSTANTIAL

1. This is the first case presented to this Court in which the voters have actually elected a person who does not meet state age requirements.

The unique question presented here is whether a state constitution can take away the right of the people to vote for and elect whomever they please.

The protections of due process include the right to vote, and this right cannot be infringed by the states. As stated by Chief Justice Warren in Reynolds v. Sims, 377 U.S. 533, 555 (1964):

> "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."

Obviously, Article VII, Section 6 of the Minnesota Constitution is an infringement of the right of citizens to vote, in that it prevents citizens from voting for persons under 21 years of age. In this case the voters have, in fact, elected a 19-year-old citizen to public office, but Article VII, Section 6, effectively disenfranchises the persons who voted for David Meyers.

It is plaintiffs' contention that under the First and Fourteenth Amendments to the United States Constitution they have a right to vote for and elect to public office persons of any age, or at least adult persons of any age. This right supersedes the attempted limitations of the right to vote contained in the Minnesota Constitution.

In Lubin v. Panish, 415 U.S. 709 (1974), this Court struck down the California requirements regarding candidates' filing fees insofar as they operated to prevent indigent candidates from appearing on the ballot. The Court stated:

> "The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both and it is this broad interest that must be weighed in the balance." 415 U.S. at 716.

In his concurring opinion, Mr. Justice Douglas made it clear that it is not only the rights of the candidates which are at stake, but also the rights of the voters:

> "Voting is clearly a fundamental right.... But the right to vote would be empty if the State could arbitrarily deny the right to stand for election. California

> does not satisfy the Equal Protection Clause when it allows the poor to vote but effectively prevents them from voting for one of their own economic class." 415 U.S. at 721-722.

With equal power, it may be stated that Minnesota does not satisfy the Equal Protection Clause when it allows 18 to 20 year olds to vote, but effectively prevents them from voting for one of their own age class.

It should be noted that in Lubin v. Panish, supra, Justices Blackmun and Rehnquist concurred in the decision because the California filing fees were applied to write-in candidates as well as filing candidates. Mr. Justice Blackmun stated, "I would regard a write-in procedure, free of fee, as an acceptable alternative." 415 U.S. at 722. In other words, there must be some way for the voters to elect persons who are otherwise ineligible to be on the ballot, whether because of indigency (as in Lubin v. Panish) or because of age (as here).

This argument is reinforced by Powell v. McCormack, 395 U.S. 486, 547 (1969), where the Court stated:

> "A fundamental principle of our representative democracy is, in Hamilton's words, 'that the people should choose whom they please to

govern them.' 2 Elliott's Debates 257. As Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself." (Emphasis added)

The Constitution of the United States, of course, specifically requires that the people elect a President and Vice President who are at least 35 years of age (Article II, Sec. 1), a Senator who is at least 30 years of age (Article I, Sec 3), and a Representative who is at least 25 years of age (Article I, Sec. 2). This does not mean that states may impose similar age requirements; for example, the geographical composition of the United States Senate does not justify the composition of state legislatures on other than a one-person/one-vote basis. As decided in Reynolds v. Sims, 377 U.S. 533 at 575 (1964), "...such a plan is impermissible for the States under the Equal Protection Clause...." (emphasis added). Unless specifically authorized by the United States Constitution, the requirements of equal protection and due process similarly prevent states from limiting the right of the people to choose whom they please to govern them.

2. This Court should resolve conflicts in state and federal decisions as to the equal protection criterion to be applied in cases involving a person's right to run for and

hold public elective office.

In that portion of its decision upholding the 21-year-old requirement for running for office, the Minnesota Supreme Court, in effect, applied the traditional "rational relation" test in holding against Appellant David Meyers. (App., infra, pp. 6a-10a). The question presented here is whether a more stringent strengthened rational relation test must be utilized in cases involving a person's right to run for and hold elective office.

The "rational relation" test was described by Chief Justice Warren as follows:

> ...[The Equal Protection Clause] permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. (McGowan v. Maryland, 366 U.S. 420, 425-26 (1961) (emphasis supplied).

Under such a test, it is obvious that plaintiffs in this and most other cases usually lose. It is arguably rational, at first blush, to assume that persons 21 years of age have more maturity, experience and competence than persons 18, 19 or 20 years of age. On the other hand, it is Appellants' position that they should be allowed to prove this assumption false. The age of maturity has been decreasing steadily. Of approximately 11 million Americans in the 18 to 21 year old bracket, nearly 50% are married, 1 million have families, and nearly 3 million have served or are serving in the armed forces. Under Minnesota law, these persons are adults, and the legislature has provided that "every disability of minority at common law shall cease when a person reaches 18 years of age." Minn. St. 645.452. In addition, the judgment implicit in the 26th Amendment is that 18-21 year olds are mature enough to participate in the electoral process. In light of these facts, had the court below applied either of the more stringent tests, the Appellants would have prevailed. 1/

1/ In Bykofsky v. Borough of Middletown, 401 F.Supp. 1242 (M.D. Pa. 1975), aff'd, 535 F.2d 1245 (3rd Cir.), cert. denied, 45 U.S. Law Week 3362 (Nov. 15, 1976), the court upheld a curfew law for minors, even though a more demanding standard was used: "The age classification [here] is not arbitrary but

A. The "strict scrutiny" test.

In contast to the decision below, a number of decisions have involved application of the "strict scrutiny" test in cases involving a person's right to run for elective office.

The California Supreme Court applied that test in holding a one-year residency requirement to run for public office to be unconstitutional under the equal protection clause of the Fourteenth Amendment:

> "...it is difficult to conceive of principles more central to a political democracy than the free and untrammeled access of the public to the ballot box and the reciprocal right of candidates

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rather rests on real and substantial differences between adults and minors.... Minors are a class founded on natural and intrinsic differences from adults...and the court believes the state is free to give differential treatment to adults and youths based on inherent and practical differences...." 411 F.Supp. at 1265. The case at bar, of course, involves the rights of a 19-year-old adult.

> to seek the public's suffrage. It follows, accordingly, that we examine with a close and questioning attention every intrusion, subtle or direct, which impairs or affects the unconditional exercise of these prerogatives." Johnson v. Hamilton, 15 Cal. 3d. 461, 468 (1975).

The United States District Court for the Eastern District of Michigan also adopted the strict scrutiny test in striking down a provision of the Detroit City Charter setting an age minimum of 25 years for Council candidates. The court ruled that "since a fundamental right is at stake the law must be closely scrutinized for a compelling governmental interest." Manson v. Edwards, 345 F. Supp. 719, 723 (E.D. Mich., 1972); rev'd, 482 F.2d 1076 (6th Cir. 1973). The court went on:

> "The City of Detroit has made no showing that the knowledge or wisdom arguably necessary to fulfill the duties of Common Councilman are absent in all or most persons between the ages of 18 and 24.... The compelling interest test requires such a showing." 345 F.Supp. at p. 724.

Although this decision was reversed by the Court of Appeals, the case was remanded for

a hearing as to whether there was, in fact, a rational basis for the age classification. 482 F.2d 1076.

In Blassman v. Markworth, 359 F.Supp. 1 (N.D., Ill. 1973)(three-judge court), the court upheld the constitutionality of a statute prescribing that candidates for boards of education be 21 years of age. However, the concurring opinion of Judge Swygert relied upon the strict scrutiny test:

> "...any state action that substantially restricts the right to candidacy must be given strict scrutiny and meet the test that the restriction is justified by a compelling state interest." 359 F.Supp. at 8.

See also Mancuso v. Taft, 476 F.2d 187 (1st Cir. 1973).

B. The "strengthened rational relation" test.

Even if this Court is not willing to apply the strict scrutiny test to statutes limiting the right to run for and hold elective office, several recent decisions support the premise that something more than the traditional "rational relation" test must be applied. See Gunther, "The Supreme Court, 1971 Term, Forward: In Search of Evolving

Doctrine on a Changing Court: A Model For A Newer Equal Protection," 86 Harv.L.Rev. 1 (1972).

In Turner v. Fouche, 396 U.S. 346 (1970), the Court struck down a Georgia requirement that candidates for the County Board of Education must be landowners. The court held that citizens "have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications." Id. at 362 (emphasis added). In language which is particularly pertinent to the present case, the Court stated:

> "Nor does the lack of ownership of realty establish a lack of attachment to the community and its educational values. However reasonable the assumption that those who own realty do possess such an attachment, Georgia may not rationally presume that that quality is necessarily wanting in all citizens of the county whose estates are less than freehold." 396 U.S. at 364.

By the same token, it may be reasonable to assume that persons 21 years of age and older are sufficiently mature and wise to hold public office; but it is not rational to presume that maturity and wisdom are necessarily wanting in all citizens whose ages

are less than 21. Just as it would violate the Equal Protection Clause to assume that a certain race of citizens is incapable or inferior, so it is unconstitutional to assume that a certain age group of adult citizens is incapable or inferior.

In Bullock v. Carter, 405 U.S. 134 (1972), the Court struck down a Texas statute which required that candidates file large fees as a prerequisite to running for office. Chief Justice Burger declared that laws restricting the right to be a candidate, because they have a "real and appreciable impact on the exercise of the franchise,...must be 'closely scrutinized' and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster." 405 U.S. at 144. So in the present case, the state must be required to prove by actual evidence (and not by simply asserting presumptions as to maturity and wisdom) that excluding all 18, 19 and 20 year olds from public office is reasonably necessary to the accomplishment of legitimate state objectives.

Finally, in Lubin v. Panish, 415 U.S. 709 (1974), even smaller filing fees in California were declared unconstitutional. Chief Justice Burger stated:

> "The right of...an individual to a place on a ballot is entitled to

> protection and is intertwined with the rights of voters.... The point, of course, is that ballot access must be genuinely open to all, subject to reasonable requirements." 415 U.S. at 716, 719.

In the present case, ballot access must be genuinely open to all adult citizens, including 18, 19 and 20 year olds, unless the state can at the very least prove a compelling and substantial governmental interest in excluding them from public office. If the limitation "is not reasonably necessary to the accomplishment of the state's legitimate election interests," (Lubin v. Panish, 415 U.S. at 718), it is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

In Minnesota, 18, 19 and 20 year olds constitute about 10% of eligible voters. Depriving this large group of citizens of the right to run for and hold public elective office is a substantial and significant limitation both of their rights and of the rights of voters to choose candidates. At least a strengthened rational relation test is called for.

3. Neither Massachusetts Board of Retirement v. Murgia nor Whitehead v. Westbrook is controlling here.

This Court recently upheld the constitutionality of a statute requiring police officers to retire at age 50. Massachusetts Board of Retirement v. Murgia, ___ U.S. ___, 49 L.Ed.2d. 520, 96 S. Ct. 2562 (June 25, 1976). The court applied the rational relation test, noting that the statute did not interfere with the exercise of a fundamental right or operate to the peculiar disadvantage of a suspect class. But the Murgia case involved public employment, not public elective office, and this is a substantial and critical difference. The right to public employment has not been as strongly protected by the law as the right to vote or hold office.

If Massachusetts had enacted a law providing that no one over 50 years of age could run for or hold public elective office, the law might arguably have a rational basis - i.e.. the assumption that persons under 50 years of age are more alert and energetic, less likely to be senile, etc. But surely more than a rational relation should be required before a state be permitted to deprive citizens of the right to hold elective office in that fashion. An evidentiary hearing should be held at which the state would have to prove, by substantial evidence, that its assumptions are true.2/

2/ See the dissenting opinion of Mr. Justice Marshall at Footnote 8: "That the Court

In Whitehead v. Westbrook, 423 U.S. 962 (1975), this Court summarily affirmed a ruling upholding an Arkansas statute which set a minimum age of 30 years for candidates for the office of City Director. None of the arguments presented to the Court in the present case - the constitutional rights of voters, the strengthened rational relation test, and the 26th Amendment - was presented in the Whitehead case. In addition, the conflicts among state and federal decisions as to the equal protection criterion to be applied in cases involving a person's right to run for and hold public elective office were not presented to this Court for resolution in Whitehead.

Appellants urge the Court to note jurisdiction here so these issues can be

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concludes it is rational to legislate on the assumption that physical strength and well-being decrease significantly with age does not imply that it will reach the same conclusion with respect to legislation based on assumptions about mental or manual ability. Accordingly, a mandatory retirement law for all government employees would stand in a posture different from the law before us today." 49 L. Ed. 2d at 533.

adequately addressed and decided.

4. It is unconstitutional under the 26th Amendment to deny to voters the right to vote for persons on account of age.

The 26th Amendment to the United States Constitution provides that "the right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or by any state on account of age." The provision of Minnesota law here involved does deny or abridge the right of citizens to vote on account of age, i.e., the age of the candidate.

The Colorado Supreme Court has held that qualified electors between the age of 18 and 20 cannot be precluded by law from signing and circulating initiative petitions. The court noted that "public policy, as prescribed by the United States Congress in the 26th Amendment,...has moved in a direction favoring full participation of young voters in the political process." Colorado Project, - Common Cause v. Anderson, 495 P.2d 220, 223 (Col. 1972). This applies, the court ruled, to "the entire process involving exercise of the ballot and its concomitants." In that case, the "concomitant" was the circulation of initiative petitions. An even more fundamental concomitant is the right to

vote for persons <u>regardless of their age</u>. The 26th Amendment specifically removes the power of states to limit the right to vote on account of age, and should be construed to include the right of 18 to 20 year olds to elect to public office members of their own age group. As stated by Justice William O. Douglas, dissenting in <u>Oregon v. Mitchell</u>, 400 U.S. 112, 144 (1970), "...those who have such a large stake in modern elections as 18-year-olds...should have political equality."

CONCLUSION

In <u>Wurtzel v. Falcey</u>, 69 N.J. 401, 354 A.2d 617 (1976), the New Jersey Supreme Court upheld the validity of a requirement that candidates for the State Assembly be 21 years old and that candidates for the State Senate be 30 years old. In a strong dissent, Justice Pashman argued for adoption of a strengthened rational relation test:

> "In this bicentennial year, the freedom to run for public office is a right which should not be taken lightly. Two million possible candidates between the age of 18 and 29 cannot offer themselves as candidates due to these age restrictions. This constitutes a massive void. Society at large sorely needs

> the benefit of new, youthful voices."

In the present case the voters of Nobles County, Minnesota, have actually elected a 19 year old citizen to public office. This court should note jurisdiction in order to decide (1) whether a state may deprive the voters of that right, and (2) whether a state may deprive adult citizens of the right to hold public elective office without any <u>proof</u> that the classification is reasonable.

Respectfully submitted,

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APPENDIX

OPINION OF
THE SUPREME COURT
OF MINNESOTA

No. 258 Nobles County Todd, J.

David Meyers, et al,
Appellants,
46439 vs.
Ken W. Roberts, Nobles
County Auditor,
Respondent.

Endorsed
Filed September 24, 1976
John McCarthy, Clerk
Minnesota Supreme Court

S Y L L A B U S

Minn. Const. art. 7, § 6, requires that persons holding the office of court commissioner be at least 21 years of age. The county auditor's refusal, pursuant to this provision, to certify a 19-year-old citizen as elected to the office of court commissioner did not violate any provision of the United States Constitution.

Affirmed.

Considered and decided by the court en banc.

O P I N I O N

TODD, Justice.

In the election of November 5, 1974, plaintiff David J. Meyers ran for the office of court commissioner of Nobles County. Although Meyers' name was not included on the ballot, he received 275 write-in votes of a total of 413 votes cast. The Nobles County auditor, defendant in the case at bar, refused to certify Meyers as elected to the office because Meyers was born on March 11, 1955, and would not be 21 years of age at the time of taking office (January 2, 1975). Minn. Const. art. 7, § 6, sets 21 years of age as a minimum for holding office, and Meyers would, at the time of taking office, have been only 19 years of age.[1]

Meyers brought suit in the district court to compel the county auditor to certify him as elected to the office of court commissioner. Also named as a plaintiff was Paul L. Kegel, one of the persons who voted for

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[1] Minn. Const. art. 7, § 6, provides as follows: "Every person who by the provisions of this article is entitled to vote at any election and is 21 years of age is eligible for any office elective by the people in the district wherein he has resided 30 days previous to the election, except as otherwise provided in this constitution, or the constitution and law of the United States."

Meyers in the election. On a motion for summary judgment, the district court entered judgment dismissing the plaintiffs' complaint with prejudice, and plaintiffs appealed to this court.[2] We affirm.

Initially, plaintiffs apparently argue that the right to vote, derived from the right to peaceably assemble, guaranteed in the First Amendment and applied to the states through the Fourteenth Amendment, includes an absolute right of the people of Nobles County to elect to the office of court commissioner whomever they may choose, without restriction of any sort upon that right. Plaintiffs admit that under this view of the First and Fourteenth Amendments the people would be competent to elect either a 10-year-old child or an incarcerated felon to any office. The First Amendment right to peaceably assemble may not be read as broadly as plaintiffs urge. See, Blassman v. Markworth, 359 F.Supp. 1, 7 (N. D. Ill. 1973).

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[2] Although plaintiff Meyers is now 21 years of age, the defendant county auditor apparently still refuses to certify him because he was not 21 on the original date for taking office. Plaintiffs have not argued that Meyers' attainment of the age of 21 in March of this year entitles him to certification at this time, and we do not decide the issue.

We turn to whether Minn. Const. art. 7, § 6, upon which defendant relies in his refusal to certify Meyers as elected to office, violates the equal protection clause of the Fourteenth Amendment to the United States Constitution. Article 7, § 6, divides the voters into two classes. The favored class comprises those voters who wish to vote for a candidate 21 years of age or older, while the disfavored class comprises those voters who wish to vote for a younger aspirant to office. "[I]f a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest." Kramer v. Union Free School Dist. 395 U. S. 621, 627, 89 S. Ct. 1886, 1890, 23 L. ed. 2d 583, 589 (1969). Where, however, the classification affects the right to vote less drastically and affects only the exercise of the franchise for the candidate of one's choice, then it need only be found reasonably necessary to the accomplishment of important and legitimate state objectives in order to pass constitutional muster. Lubin v. Panish, 415 U.S. 709, 718, 94 S.Ct. 1315, 1321, 39 L. ed. 2d 702, 709 (1974); Bullock v. Carter, 405 U.S. 134, 144, 92 S. Ct. 849, 856, 31 L. ed. 2d 92, 100 (1972).

In Lubin and Bullock, the United States Supreme Court considered the constitutionality of California and Texas statutes which required candidates for public office to pay a filing fee in order to obtain a place on the ballot in the primary elections. Those statutes also divided the voters into two classes--the favored class comprising those voters who could afford to raise the filing fee necessary to put their candidate on the ballot and the disfavored class comprising those voters who could not. Although the court recognized that states have a legitimate interest in regulating the number of candidates on the ballot, it concluded that under the applicable standard--whether the classification was reasonably necessary to the accomplishment of legitimate state objectives--it was not enough to say that the fee requirement tended to limit the ballot to the more serious candidates. The statutes were held unconstitutional because the classification was not reasonably necessary to accomplish the objective of limiting the ballot only to serious contenders for office; the states could, for example, have accomplished this legitimate objective by requiring that all candidates present a certain number of voter petitions in order to obtain a place on the ballot.

Minnesota has a legitimate interest in assuring that those who hold public office possess maturity, experience, and competence. Virtually the only way to accomplish this objective is to set a minimum age for holding office. It would not be feasible to conduct

a hearing on the maturity, experience, and competence of each aspirant to public office, and such an individualized procedure might well run afoul of other constitutional guarantees. Having concluded that the establishment of a minimum age is necessary to insure the fitness of those who hold office in Minnesota, it follows that the attending discrimination between those candidates who are over the minimum age and those aspirants to office who are younger than the minimum age is reasonably necessary to the accomplishment of legitimate state objectives.

Besides voters, Minn. Const. art. 7, § 6, also divides aspirants to office into two classes, the favored class comprising those candidates who are over 21 years of age and the disfavored class comprising those who are younger. While there is a Federal constitutional right to be considered for public office without the burden of "invidiously discriminatory disqualifications" (Turner v. Fouche, 396 U.S. 346, 362, 90 S. Ct. 532, 541, 24 L. ed. 2d 567, 580 [1970]), the United States Supreme Court has not attached such fundamental status to candidacy as to invoke a rigorous standard of review. (But cf. Bullock v. Carter, 405 U. S. 134, 142, 92 S. Ct. 849, 855, 31 L. ed. 2d 92, 99 [1972]).

The court has emphasized on numerous occasions the breadth of power enjoyed by the states in determining voter qualifica-

tions and the manner of elections, but the court has also said that "this power must be exercised in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment." Bullock v. Carter, 405 U. S. 134, 141, 92 S. Ct. 849, 854, 31 L. ed 2d 92, 98 (1972). In Lassiter v. Northampton Election Bd. 360 U. S. 45, 51, 79 S. Ct. 985, 990, 3 L. ed. 2d 1072, 1077 (1959), the court said:

> "We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record (Davis v. Beason, 133 U. S. 333, 345-347) are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters."

There is a problem inherent in deciding equal-protection cases which turn on the reasonableness of an age-based classification, however. As Mr. Justice Stewart said in a separate opinion (in which he was joined by Mr. Chief Justice Burger and Mr. Justice Blackmun), concurring in part and dissenting in part, in Oregon v. Mitchell, 400 U. S. 112, 294, 91 S. Ct. 260, 349, 27 L. ed. 2d 272, 379 (1970):

"To be sure, recent decisions have established that state action regulating suffrage is not immune from the impact of the Equal Protection Clause. But we have been careful in those decisions to note the undoubted power of a State to establish a qualification for voting based on age. See, e.g., Kramer v. Union School District, 395 U. S. 621, 625; Lassiter v. Northampton Election Board, 360 U. S. at 51. Indeed, none of the opinions filed today suggest that the States have anything but a constitutionally unimpeachable interest in establishing some age qualifications as such. Yet to test the power to establish an age qualification by the 'compelling interest' standard is really to deny a State any choice at all, because no State could demonstrate a 'compelling interest' in drawing the line with respect to age at one point rather than another. Obviously, the power to establish an age qualification must carry with it the power to choose 21 as a reasonable voting age, as the vast majority of the States have done."

In a footnote, Mr. Justice Stewart also expressed the further view (400 U. S. 295, 91 S. Ct. 349, 27 L. ed. 2d 379):

"If the Government is correct in its submission that a particular age requirement must meet the 'compelling interest' standard, then, of course, a substantial question would exist whether a 21-year-old voter qualification is constitutional even in the absence of congressional action, as my Brothers point out. Ante, at 241-246. Yet it is inconceivable to me that this Court would ever hold that the denial of the vote to those between the ages of 18 and 21 constitutes such an invidious discrimination as to be a denial of the equal protection of the laws. The establishment of an age qualification is not state action aimed at any discrete and insular minority. Cf. United States v. Carolene Products Co., 304 U. S. 144, 152 n. 4. Moreover, so long as a State does not set the voting age higher than 21, the reasonableness of its choice is confirmed by the very Fourteenth Amendment upon which the Government relies. Section 2 of that Amendment provides for sanctions when the right to vote 'is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States***."

We have previously decided that the state may set a minimum age for holding office

greater than the voting age without violating the equal protection clause of the Fourteenth Amendment. Opatz v. City of St. Cloud, 293 Minn. 379, 196 N. W. 2d 298 (1972). Since then, only last year, the United States Supreme Court affirmed without opinion an unreported memorandum decision of a Federal District Court, Whitehead v. Westbrook (W. D. Ark. May 21, 1975, Civil No. F-74-41-C), which determined that an Arkansas statute which set 30 years as the minimum age for holding the office of city director did not deny the equal protection of the laws to an aspirant for office who was, under the Arkansas statute, denied a place on the ballot because he was only 28 years of age at the time of the election. Whitehead v. Westbrook, 423 U. S. 962, 96 S. Ct. 388, 46 L. ed. 2d 299 (1975).

It could be argued under the "reasonably necessary to accomplish a legitimate state objective" test that the appropriate disposition of this case is a remand to the district court for taking evidence on the issue whether a 19-year-old aspirant to office is, as a matter of fact, less mature, experienced, and competent than a 21-year-old candidate. Wurtzel v. Falcey, ___ N. J. ___, 354 A. 2d 617 (1976)(Mr. Justice Pashman, dissenting).

Plaintiffs next argue that the Twenty-Sixth Amendment to the United States Constitution supersedes Minn. Const. art. 7, § 6, and requires that no persons 18 years of age

or older be precluded from holding office on account of age.[3] This amendment on its face applies only to the right to vote; it says nothing about the right to hold office. This court has previously decided that the Twenty-Sixth Amendment does not supersede Minn. Const. art. 7, § 6, and we adhere to those decisions. Jude v. Erdahl, 296 Minn. 200, 205, note 1, 207 N. W. 2d 715, 718 (1973); Opatz v. City of St. Cloud, 293 Minn. 379, 383, 196 N. W. 2d 298, 301 (1972).

Finally, plaintiffs argue that in Minn. Const. art 7, § 6, the language "except as otherwise provided in this constitution or the constitution and law of the United States"

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[3] The Twenty-Sixth Amendment to the United States Constitution provides as follows:
"Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

"Sec. 2. The Congress shall have power to enforce this article by appropriate legislation."

refers to Minn. Const. art. 6, § 5.[4] Plaintiffs argue that the failure of the legislature to specify by law any minimum age for holding the office of court commissioner is an expression of its intention that there be no minimum age for the holding of that office. In Jude v. Erdahl, 296 Minn. 200, 206, 207 N.W. 2d 715, 719 (1973), we said:

> "*** [W]e are of the opinion that the intent of the legislature and of the voters is better served by limiting that exception [in art. 7, § 6] to offices where the age requirements are expressly specified, as in art. 5, § 3 [art. 5, § 2, in the 1974 Constitution adopted November 5, 1974], dealing with the minimum age of candidates for governor and lieutenant governor, and the provisions of the United States Constitution specifying the age requirements for

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[4] Minn. Const. art. 6, § 5, provides as follows: "Judges of the supreme court and the district court shall be learned in the law. The qualifications of all other judges and judicial officers shall be prescribed by law. The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office." (Italics supplied.)

> candidacy to Federal office."
> (Italics supplied.)

We adhere to the majority view in Jude.

Affirmed.

Memorandum Opinion of the District Court

The Court is of the opinion that Plaintiffs should have served notice of this proceeding upon the State Attorney General as to the constitutional issues raised. (See M.S.A. 8.01 and 555.11.) However, the Court will consider the constitutional issues raised by the Plaintiffs even though the State would not be bound by this Court's ruling because the State was not made a party.

Although the right to vote and the right to hold public elective office is closely tied together in concept and principle, the law has always recognized that these rights are not reciprocal and symmetrical in all respects. The law has always recognized that the right to hold public elective office may be hedged about by qualifications which are reasonable and bear some reasonable relationship to the needs of that office. The test of reasonableness is a guarantee that such qualifications will not result in arbitrary denial of the office to an otherwise qualified voter and will not result in a denial to the electorate of the right to choose its own public officers. Qualifications as to place and length of residence and educational or other certification as well as provisions covering mandatory retirmenet have been sustained by the courts for many years.

It is clear that the character and abilities of a voter, even what we consider a good voter, may be but are not necessarily the same as ideally required of an elected public official. The elements of experience, maturity and emotional stability are not required to the same degree in each capacity. It is all a matter of degree. The legislature and the electorate could, and did, believe that factually a person twenty-one years of age is more likely to have a higher degree of maturity, experience and stability than does a person of eighteen years of age. Of course, this is not necessarily true in any individual case but as a general rule it is true.

The first eighteen years of a person's life is lived in a very limited, controlled and protected environment. Experiences are generally limited to the family and school setting. This experience, in contrast to an experience on one's own in the world without such guidance and control, is a difference which is reasonable and factual and bears a reasonable relationship to the desired qualities we seek for in our elected public officials.

As Plaintiffs point out, the courts, State and Federal, have taken the position that the Twenty-sixth Amendment only applies to a voter qualification and does not, even in conjunction with other Federal Constitu-

tional provisions, apply to qualifications to hold office. (See cases cited by Plaintiffs in their brief.) In any event, this Court feels bound by the rulings of the Minnesota Supreme Court in Opatz vs. City of St. Cloud, 196 NW2d 298, and Jude vs. Erdahl, 207 NW2d 715. The fact that in those two cases Plaintiffs were not actually on a ballot nor actually elected and here the Plaintiff, Meyers, actually appeared on a write-in ballot and was actually elected, does not require a different ruling. The principles are the same in all three cases. Article VII, Section 6 is constitutional.

Plaintiffs also argue that they are entitled to relief, regardless of the constitutional issues raised by them, because Article VI, Section 5 delegates to the legislature the power to prescribe qualifications for judicial officers and that such provision is contemplated within the phrase "except as otherwise provided in this Constitution." in Article VII, Section 6. They reason that since the legislature has not acted to set qualifications as to age for judicial officers that Minnesota Statutes 645.452 thus controls as the latter statute effectively removes every disability by reason of age, with few limited exceptions, between the years twenty-one and eighteen. The Court cannot accept this argument of the Plaintiffs as it appears clear to this Court that Article VI, Section 5 limits qualifications "of all other judges and judicial officers" to the sole matter of degree of training, education or certification. The first sentence of said section clearly requires that judges of the Supreme and District Courts be learned in the law. There is no other qualification referred to in that section. The only reasonable interpretation is that the constitution authorizes the legislature to establish qualifications for all other judges and judicial officers only as above indicated. This does not grant the legislature the authority to set qualifications on the basis of age.

As to Article VII, Section 6, the phrase "except as otherwise provided in this Constitution, or the Constitution and Law of the United States" clearly refers to the three conditions for eligibility to hold office, to-wit: Is twenty-one years of age, the elective office must be in the district wherein he resides, and he must have resided therein thirty days previous to the election. The plain reading of this section refers solely to other constitutional provisions which may set a different age, location of elective office and days of residence required and thus cannot, in any way, refer to "the qualifications... prescribed by law" as this latter phrase refers, as has been stated above, only to conditions or qualifications concerning education, training, experience or certification in relation to the qualification of being learned in the law.

This memo is expressly made a part of this Order.

- Harvey A. Holtan
Judge of District Court

NOTICE OF APPEAL TO THE
SUPREME COURT OF
THE UNITED STATES

STATE OF MINNESOTA
IN SUPREME COURT

David Meyers and Paul L. Kegel, Appellants, vs. Ken W. Roberts, Nobles County Auditor, Respondent.	No. 46439 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

NOTICE IS HEREBY GIVEN that Appellants, David Meyers and Paul L. Kegel, hereby appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Minnesota, filed September 24, 1976 in the above entitled matter.

This appeal is taken pursuant to 28 USC §1257 (2).

Dated October 21, 1976.

s/ James H. Mahanan
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ATTORNEY FOR APPELLANTS

Supreme Court, U. S.
FILED
JAN 17 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-830

DAVID W. MEYERS and PAUL L. KEGEL,
Appellants,

vs.

KEN W. ROBERTS, COUNTY AUDITOR OF NOBLES COUNTY, MINNESOTA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

APPELLEE'S MOTION TO AFFIRM OR DISMISS

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TABLE OF CONTENTS

	PAGE
Appellee's Motion To Affirm Or Dismiss	1
Opinions Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provisions Involved	2
Statement	3
Argument	3
I. The age requirement of the Minnesota Constitution, Article VII, Section 6, does not violate the Equal Protection clause.	4
II. Article VII, Section 6, of the Minnesota Constitution does not violate the Twenty-sixth Amendment.	7
Conclusion	8

TABLE OF AUTHORITIES

PAGE

Cases:

Adams v. Sikew, 511 F.2d 700 (5th Cir. 1975) ... 4

Blassman v. Markworth, 359 F. Supp. 1 (N.D. Ill. 1973) ... 4, 7

Bullock v. Carter, 405 U.S. 134, 92 S. Ct. 849, 31 L.Ed.2d 92 (1972) ... 4, 5

Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L.Ed.2d 274 (1972) ... 4

Hicks v. Miranda, 422 U.S. 332, 95 S. Ct. 2281, 45 L.Ed.2d 223 (1975) ... 6

Human Rights Party v. Secretary of State for Michigan, 370 F. Supp. 921 (E.D. Mich. 1973), *aff'd.*, 414 U.S. 1058 (1973) ... 4

Jude v. Erdahl, 296 Minn. 200, 207 N.W.2d 715 (1973) 7

Kramer v. Union Free School District, 395 U.S. 621, 89 S. Ct. 1886, 23 L.Ed.2d 583 (1969) ... 4

Lubin v. Panish, 415 U.S. 709, 94 S. Ct. 1315, 39 L.Ed.2d 702 (1974) ... 5

Massachusetts Board of Retirement v. Murgia, —— U.S. ——, —— S. Ct. ——, 49 L.Ed.2d 520 (1976) ... 6

Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L.Ed.2d 600 (1968) ... 4

Spencer v. Board of Education, 39 App. Div. 2d 399, 334 N.Y.S.2d 783, *aff'd.*, 31 N.Y.2d 810, 339 N.Y.S.2d 461 (1972) ... 7

Wade v. Waller, 402 F. Supp. 922 (N.D. Miss. 1975) 4

Whitehead v. Westbrook, 423 U.S. 962 (1975) ... 6

PAGE

Constitutional Provisions:

United States Constitution, Amendment XIV, Section 1 ... 2

United States Constitution, Amendment XXVI, Section 1 ... 2

Minnesota Constitution, Article VII, Section 6 ... 2, 3, 4, 7

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-830

DAVID W. MEYERS and PAUL L. KEGEL,
Appellants,

vs.

KEN W. ROBERTS, COUNTY AUDITOR OF NOBLES COUNTY, MINNESOTA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

APPELLEE'S MOTION TO AFFIRM OR DISMISS

Appellee moves the Court to dismiss this appeal or, alternatively, to affirm the judgment of the Minnesota Supreme Court in this matter on the grounds that the appeal does not present a substantial federal question requiring further argument, and was correctly decided below.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court in this case is reported at 246 N.W.2d 186 and set out at pages 1a-13a of Appellants' Jurisdictional Statement. The unreported opinion of the Nobles County District Court is set out at pages 14a-18a of Appellant's Jurisdictional Statement.

JURISDICTION

The jurisdictional requirements are adequately set forth in the Jurisdictional Statement.

QUESTION PRESENTED

1. Does Article VII, § 6 of the Minnesota Constitution violate Amendment XIV, § 1, or Amendment XXVI, § 1 of the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV, § 1 of the United States Constitution provides:

> . . . No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Amendment XXVI, § 1 of the United States Constitution provides:

> The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Article VII, § 6 of the Minnesota Constitution provides:

> Every person who by the provisions of this article shall be entitled to vote at any election and is twenty-one years of age shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election, except as otherwise provided in this Constitution, or the Constitution and law of the United States.

STATEMENT

Appellee agrees with the appellants' rendition of the stipulated facts of this case.

ARGUMENT

Article VII, §6 of the Minnesota Constitution requires office holders in Minnesota, with certain exceptions, to be eligible voters, 21 years of age or older, and to reside in the district from which they are elected for 30 days. Appellant Meyers was not eligible to hold the office of Nobles County Court Commissioner under this provision because he was not 21 years old when he was elected or when he would have assumed office. In this appeal, appellants contend that this age requirement violates both appellant Meyers' right to hold office and appellant Kegel's right to vote under the Fourteenth and Twenty-Sixth Amendments to the United States Constitution. Appellee submits that the arguments advanced by appellants, whether considered from the vantage point of the right to hold office or the right to vote, are wholly without merit and that the decision of the Minnesota Supreme Court in this case is correct. This Court should therefore dismiss the appeal or, alternatively, affirm the decision below.

I. THE AGE REQUIREMENT OF THE MINNESOTA CONSTITUTION, ARTICLE VII, SECTION 6, DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

The preliminary step in any Equal Protection case is to decide what standard the attacked provision should be judged under. In cases affecting "fundamental interests", the provision should be examined under the so-called "compelling state interest" test. In other cases, the provision should be judged under the "rational relationship" test. *Shapiro v. Thompson*, 394 U.S. 618 (1968); *Dunn v. Blumstein*, 405 U.S. 134 (1972).

This Court has clearly held that the right to run for public office is not a fundamental right, and the strict scrutiny test should therefore not apply to this aspect of the case. *Bullock v. Carter*, 405 U.S. 134 (1972).[1]

In cases involving the right to cast a ballot a further delineation must be made in order to decide upon the appropriate standard for review.

> [I]f a challenged state statute *grants the right to vote to some bona fide residents* of requisite age and citizenship and *denies the franchise to others*, the Court must determine whether the exclusions are necessary to promote a compelling state interest.

Kramer v. Union Free School District (emphasis added), 395 U.S. 621, at 627 (1969). If, on the other hand, the challenged provision does not disenfranchise some voters, but only impedes their right to vote for a particular candidate or candidates, it must only satisfy the rational relationship test. *Lubin v. Panish*, 415 U.S. 709 (1974); *Bullock v. Carter, supra.*

[1] *See also*: Adams v. Sikew, 511 F.2d 700 (5th Cir. 1975); Blassman v. Markworth, 359 F. Supp. 1 (N.D. Ill. 1973); Wade v. Waller, 402 F. Supp. 922 (N.D. Miss. 1975); Human Rights Party v. Secretary of State for Michigan, 370 F. Supp. 921 (E.D. Mich. 1973), *aff'd.* 414 U.S. 1058 (1973).

Here, there has been no restriction placed on appellant Kegel's right to vote. The only damage done to his franchise is that the candidate he favors is ineligible to hold office.[2] The case should therefore be judged under the rational relationship standard.

The Minnesota Supreme Court found that a rational relationship did exist between the challenged constitutional provision and a legitimate state interest in this case.

> Minnesota has a legitimate interest in assuring that those who hold public office possess maturity, experience, and competence. Virtually the only way to accomplish this objective is to set a minimum age for holding office. It would not be feasible to conduct a hearing on the maturity, experience, and competence of each aspirant to public office, and such an individualized procedure might well run afoul of other constitutional guarantees. Having concluded that the establishment of a minimum age is necessary to insure the fitness of those who hold office in Minnesota, it follows that the attending discrimination between those candidates who are over the minimum age and those aspirants to office who are younger than the minimum age is reasonably necessary to the accomplishment of legitimate state objectives.

[2] A similar sort of restriction would exist if the candidate appellant Kegel favored were dead, or had a criminal record, or lived outside the election district.

(Pages 5a-6a of the Jurisdictional Statement.) Appellants do not dispute this conclusion; instead, they argue that while Article VII, § 6, may satisfy the rational relationship test, it cannot satisfy a more narrow standard.[3] However, as previously demonstrated, there has been no significant limitation placed on the right to vote in this case, and the more narrow standard of review demanded by appellants is therefore inapplicable.

Finally, this Court has recently recognized that the rational relationship test applies to cases of age discrimination. *See*: *Massachusetts Board of Retirement v. Murgia*, —— U.S. ——, 49 L.Ed.2d 520 (1976); *Whitehead v. Westbrook*, 423 U.S. 962 (1975).[4]

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[3] Jurisdictional Statement, pp. 11-12.

[4] Appellants try to distinguish Whitehead, which upheld an Arkansas statute making 30 the minimum age for holding a city office, on the basis of the phrasing of the questions presented. See Jurisdictional Statement, p. 20, and 43 U.S.L.W. 3109 (Sup. Ct. Ed., Aug. 26, 1975). While the case is perhaps different as a matter of form, as a matter of substance it is indistinguishable from this one, and the Court's summary affirmance in Whitehead should dictate a similar result here. Hicks v. Miranda, 422 U.S. 332 (1975).

II. ARTICLE VII, § 6, OF THE MINNESOTA CONSTITUTION DOES NOT VIOLATE THE TWENTY-SIXTH AMENDMENT.

The Twenty-Sixth Amendment guarantees the right to vote to every United States citizen eighteen years of age and older and not otherwise ineligible. Its terms plainly do not guarantee those same persons the right to hold public office. Yet appellants in this case contend that the amendment does do that on the basis that its use of the term "age" refers to the age of candidates for office as well as the age of the voters themselves.

Appellants offer no significant support for their novel interpretation of this amendment. As a matter of fact, what case law there is on the amendment denies any correlation between its protection of the right to vote and a right to hold public office. *Blassman v. Markworth, supra; Jude v. Erdahl*, 296 Minn. 200, 207 N.W.2d 715 (1973); *Spencer v. Board of Education*, 39 App. Div. 2d 399, 334 N.Y.S.2d 783, *aff'd.*, 31 N.Y.2d 810, 339 N.Y.S.2d 461 (1972).

The Twenty-Sixth Amendment does express a recent national policy favoring political participation by 18-21 year olds. However, it does not guarantee that participation through the process of holding public office. Such a guarantee, if it is to be made, should come through legislative action or by the process of constitutional amendment, not through judicial action.

CONCLUSION

The age requirement of the Minnesota Constitution for holding public office does not unconstitutionally impede the right to vote or the right to hold public office. It is a rational means of furthering a legitimate state objective—assuring that office holders possess certain minimal qualifications. The decision of the Minnesota Supreme Court on this subject was therefore entirely correct and this Court should therefore affirm that decision or, alternatively, dismiss this appeal for want of a substantial federal question.

Respectfully submitted,

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